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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

		Application Number	10/633,008
		Filing Date	JULY 31, 2003
		First Named Inventor	AVI J. ASHKENAZI
		Group/Art Unit	1641
		Petitions Attorney	DOUGLAS I. WOOD
Total Number of Pages in This Submission	14	Attorney Docket Number	39766-0100 P1

ENCLOSURES (check all that apply)

<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Response <input type="checkbox"/> After Final <input type="checkbox"/> Version With Markings Showing Changes <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 <input type="checkbox"/> Copy of Notice	<input type="checkbox"/> Copy of an Assignment <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> REQUEST FOR RECONSIDERATION OF PETITION UNDER 37 C.F.R. §1.47(a) <input checked="" type="checkbox"/> DECLARATION OF SUMAN MIRMIRA <input type="checkbox"/> DECLARATION OF C. FONG <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Small Entity Statement <input type="checkbox"/> Request for Refund	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> ADDITIONAL ENCLOSURE(S) (PLEASE IDENTIFY BELOW): <input checked="" type="checkbox"/> COPIES OF 4/15/04 LETTER TO D. TUMAS; FEDERAL EXPRESS LABELS; and STAMPED RETURN POSTCARD
Remarks		

AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT 08-1641 FOR ANY FEES DUE IN CONNECTION WITH THIS PAPER, REFERENCING ATTORNEY'S DOCKET NO. 39766-0100 P1.

SIGNATURE OF APPLICANT, ATTORNEY OR AGENT

Firm or Individual name	HELLER EHRLMAN WHITE & McAULIFFE LLP 275 Middlefield Road, Menlo Park, California 94025		GINGER R. DREGER (Reg. No. 33,055)
Signature			
Date	MAY 28, 2004	Customer Number:	25213

CERTIFICATE OF EXPRESS MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. §1.10 on the date indicated below and addressed to: **MAIL STOP PETITION**, Commissioner for Patents, PO Box 1450, Alexandria, Virginia 22313-1450, on this date: **MAY 28, 2004**

Express Mail Label EL 977 677 384 US

Typed or printed name	C. FONG		
Signature		Date	MAY 28, 2004

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop , Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



6-01-04

DAG
JFW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:) Petitions Attorney: Douglas I. Wood
Avi J. ASHKENAZI, et al..) Art Unit: 1641
Application Serial No. 10/633,008) Attorney's Docket No. 39766-0100 P1
Filed: July 31, 2003) Customer No. 25213
For: USE OF A33 ANTIGENS AND JAM-IT)

EXPRESS MAIL LABEL NO. EL 977 677 384 US

Date Mailed: MAY 28. 2004

REQUEST FOR RECONSIDERATION OF PETITION UNDER 37 C.F.R. §1.47(a)

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

This is in response to the Decision Refusing Status Under 37 C.F.R. §1.47(a) ("Decision") mailed on April 2, 2004. This response is timely filed within the two month shortened statutory period set by the Petitions' Branch for the response, and no extension of time fees are due. Attached herewith are (1) a copy of the cover letter transmitting the specification, including claims and drawings to the non-signing inventor; (2) Declaration of Suman Mirmira; (3) Declaration of C. Fong; and (4) copies of the Federal Express packages in which the application and other enclosures were sent to the non-signing inventor and in which the undeliverable material was returned..

In the Decision, the PTO states that "petitioners have not provided proof that the non-signing inventor was ever sent or given a copy of *this* application as filed." In accordance with the PTO's suggestion, petitioners attach, as proof that the non-signing inventor was sent a copy of this application, (a) a copy of the cover letter transmitting the specification, including claims and drawings, a Combined Declaration for Patent Application and Power of Attorney and an Assignment and (b) copies of the two Federal Express packages, including the receipts, in which the letter and listed enclosures were sent to the non-signing inventor and in which the undeliverable material was returned..

As stated in the Declaration of Suman Mirmira, several efforts were made to ascertain the correct address of the non-signing inventor. The patent application (including specification, claims and drawings); a Combined Declaration for Patent Application and Power of Attorney; and an Assignment were then sent to him, via Federal Express, with instructions and a request that he sign the Combined Declaration for Patent Application and Power of Attorney as well as the Assignment as indicated. Two attempts were made to send the package to the non-signing inventor on April 15, 2004, and April 20, 2004. Both attempts were unsuccessful and the packages were returned by Federal Express for failure to deliver because the recipient had either "moved and left no forwarding address," or because "recipient's address was incorrect and/or incomplete and [Federal Express was] unable to obtain the correct address." See the "Attention Customer" stickers on the attached copies of the FedEx packages.

Further, the searches conducted to obtain the current address for the non-signing inventor revealed a phone number for the non-signing inventor. The number was called in an attempt to reach the non-signing inventor telephonically, but that also failed as the number was "no longer in service." See Declaration of Suman Mirmira.

Accordingly, Applicants submit that Applicants have made a diligent effort to reach the non-signing inventor and provide him with a copy of the application, and that he cannot be reached or located despite this effort. Applicants therefore request that the PTO to reconsider and grant the status under 37 CFR § 1.47(a).

Applicants believe that because the petition fee of \$130.00 was paid with the previous (denied) petition, no fee is due with this petition. However, the Commissioner is authorized to charge any fees, including petition fees and any fees for extension of time, or credit any overpayment to Deposit Account No. 08-1641 (referencing Docket No. 39766-0100 P1).

Respectfully submitted,

Date: May 28, 2004

By: Ginger R. Dreger
Ginger R. Dreger (Reg. No. 33,055)

HELLER EHRMAN WHITE & McAULIFFE LLP

275 Middlefield Road

Menlo Park, California 94025

Telephone: (650) 324-7000

Faxsimile: (650) 324-0638

SV 2036404 v1

5/28/04 2:18 PM (39766.0100)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Avi J. ASHKENAZI, et al..

Application Serial No. 10/633,008

Filed: July 31, 2003

For: **USE OF A33 ANTIGENS AND JAM-IT**

) Petitions Attorney: Douglas I. Wood
) Art Unit: 1641
) Attorney's Docket No. 39766-0100 P1
) **Customer No. 25213**
)

EXPRESS MAIL LABEL NO. EL 977 677 384 US

Date Mailed: **MAY 28, 2004**

DECLARATION OF SUMAN MIRMIRA

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia 22313-1450

Sir:

I, SUMAN MIRMIRA, do declare and state as follows:

1. I am an associate at the law firm of Heller Ehrman White and McAuliffe LLP and that the portfolio of cases that I am responsible for includes the above-identified application.
2. On April 15, 2004, after receiving the Decision Refusing Status Under 37 CFR § 1.47(a), I reviewed the file of the above-identified application and obtained the address of Mr. Daniel Tumas, the non-signing inventor, from the "Statement of Facts in Support of 37 CRF 1.47(a) Petition" originally filed with Application No. 10/265,542 and subsequently with the above-identified application. I obtained an address for Mr. Tumas in Orinda, California.
3. I then called Ms. P. Tobin at Genentech Inc. to enquire if the address in the file was correct or, if she had an updated address for Mr. Tumas. I was told that the address I had (from the file) was the latest-known address for Mr. Tumas.
4. I further searched the Internet at "<http://people.yahoo.com/>" and "www.whitepages.com" for "tumas." In "<http://people.yahoo.com/>," a search for "tumas" in Orinda, California, produced 2 results, one for Dan and the other for Margaret, both residing at the same address. A search in the "entire USA" database produced only one Dan Tumas, residing in Orinda, CA. In

"www.whitepages.com" the search in Orinda, California, produced 2 results (Dan and Margaret) and a search without specifying city or state produced 87 results, again, with only one Dan Tumas, residing in Orinda, California.

5. I also obtained a telephone number for Mr. Tumas from the above searches. The number listed was (925) 376-3935. This was identical to the telephone number listed in the "Statement of Facts in Support of 37 CRF 1.47(a) Petition" originally filed with Application No. 10/265,542.

6. I called the listed number, but could not reach any person. Instead, I received a recorded message that said that I had reached "a number that has been disconnected or is no longer in service."

7. On the same day, *i.e.*, April 15, 2004, I prepared a letter to Mr. Tumas giving him instructions regarding the contents of the patent application and his duties as an inventor and requested that if the application was accurate and complete, then he should sign the Declaration and Assignment. Along with the letter, I enclosed the following: (a) a copy of the above-identified patent application as filed (including specification, claims and drawings); (b) a Combined Declaration for Patent Application and Power of Attorney; and (c) an Assignment.

8. I signed the letter and instructed my assistant, Ms. C. Fong, to send the package to Mr. Tumas to his Orinda, California, address via Federal Express (standard overnight delivery).

9. On April 20, 2004, I requested Ms. C. Fong to contact Federal Express and check if the package had been signed for and accepted by Mr. Tumas. At that time, I was told that the package had been sent without a request for a signed release.

10. I then asked Ms. C. Fong to make a copy of my letter and enclosures and re-send the packet to Mr. Tumas at his Orinda, California, address via Federal Express (standard overnight delivery), this time requiring a signed release of the package.

11. On April 22, 2004, Ms. Fong informed me that she had received a call from a Federal Express employee who informed Ms. Fong that the package could not be delivered to Mr. Tumas as he did not reside at the address on the package. Ms. Fong asked me if we could provide the Federal Express employee with an updated address for Mr. Tumas, and I told her that I had none.

She relayed this information to the Federal Express employee who then wanted to know if both packages, the one mailed on April 15, 2004, and the one mailed on April 20, 2004, should be returned. I said, yes, and both packages were returned to us.

12. I hereby declare that all statements made in this Declaration of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

Respectfully submitted,



SUMAN MIRMIRA

Date: May 28, 2004

HELLER EHRLMAN WHITE & McAULIFFE LLP
275 Middlefield Road
Menlo Park, California 94025
Telephone: (650) 324-7000
Facsimile: (650) 324-0638

SV 2036405 v1
5/28/04 2:14 PM (39766.0100)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Avi J. ASHKENAZI, et al..

Application Serial No. 10/633,008

Filed: July 31, 2003

For: **USE OF A33 ANTIGENS AND JAM-IT**

) Petitions Attorney: Douglas I. Wood
) Art Unit: 1641
) Attorney's Docket No. 39766-0100 P1
) Customer No. 25213
)

EXPRESS MAIL LABEL NO. EL 977 677 384 US

Date Mailed: **MAY 28. 2004**

DECLARATION OF C. FONG

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia 22313-1450

Sir:

I, C. FONG, do declare and state as follows:

1. I am a patent assistant at the law firm of Heller Ehrman White and McAuliffe LLP.
2. On April 15, 2004, I sent Mr. Tumas a package containing the following: (a) a letter prepared and signed by Ms. Suman Mirmira; (b) a copy of the 39766-0100 P1 patent application as filed (including specification, claims and drawings); (c) a Combined Declaration for Patent Application and Power of Attorney with a tab indicating the spot where Mr. Tumas was to sign; and (d) an Assignment with a tab indicating the spot where Mr. Tumas was to sign. The package was sent via Federal Express (standard overnight delivery). I prepared the Federal Express label myself, inserted the above-identified documents into the envelope, sealed the envelope and left it for our firm's mail services to pick and deliver to Federal Express.
3. On April 20, 2004, Ms. Suman Mirmira requested me to contact Federal Express to check if the package had been signed for and accepted by Mr. Tumas. At that time, I informed her that the package had not been sent with a request for a signed release.
4. At this time, on Ms. Suman Mirmira's request, I made a copy of the letter and all the enclosures (as described in paragraph 2) and re-sent the package to Mr. Tumas at his Orinda,

California, address via Federal Express (standard overnight delivery). This time I added the requirement that the package be released only with a signature of acceptance.

5. On April 22, 2004, I received a call from Jo, a Federal Express employee from the Pacheco, California, Office. Jo informed me that the package could not be delivered to Mr. Tumas as he did not reside there, and asked me for an updated address for Mr. Tumas. I checked with Ms. Suman Mirmira and told Jo that we had none. Jo then wanted to know if she should return both packages, the one mailed on April 15, 2004, and the one mailed on April 20, 2004, to us and I said, yes. Both packages were returned to us; one on Friday, April 23, 2004 and the other on Monday, April 26, 2004.

6. I hereby declare that all statements made in this Declaration of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

Respectfully submitted,

Date: May 28, 2004


C. FONG

HELLER EHRMAN WHITE & McAULIFFE LLP
275 Middlefield Road
Menlo Park, California 94025
Telephone: (650) 324-7000
Facsimile: (650) 324-0638

SV 2036406 v1
5/28/04 2:41 PM (39766.0100)

April 15, 2004

Via Federal Express

Suman Mirmira
smirmira@hewm.com
Direct (650) 324-7132
Main (650) 324-7000
Fax (650) 324-0638

Daniel Tumas
3 Rae Avenue
Orinda, CA 94563

Re: U.S. Patent Application Serial No. 10/633,008

Filed: July 31, 2003

Title: USE OF A33 ANTIGENS AND JAM-IT

Inventors: Ashkenazi, et al.

Genentech Reference: P1216P1

Our Reference: 39766-0100 P1

Dear Mr. Tumas:

Enclosed is the above-identified patent application as filed (including specification, claims and drawings), a Combined Declaration for Patent Application and Power of Attorney and an Assignment. Please sign and date the documents as indicated.

United States patent laws require that the application describe the invention, and the method for making and using it, completely and accurately such that a person who has an ordinary amount of skill in the technology pertaining to this invention could, after reviewing the application, make and use the invention. Additionally, the patent laws require that the application set forth the preferred implementation or "best mode" of carrying out the invention. If the application would not permit such persons of ordinary skill to make and use the invention, or if you, at this time, know of a better way to make or use your invention than that which is described in the enclosed application, please let us know immediately.

Please read carefully the enclosed patent application in connection with the above requirements. If there is anything in the application that appears to be incomplete or inaccurate, or that may be misleading, then contact us at once.

If the application is accurate and complete in its present form, please read the Declaration which is attached to the back of the application. You must carefully consider certain matters before signing the Declaration.

The Declaration states that there is a duty to disclose information regarding earlier developments and the like which may be material to the examination of the application. If you know of such information now or learn of any while the application is pending in the U.S. Patent and Trademark Office, please advise us promptly.

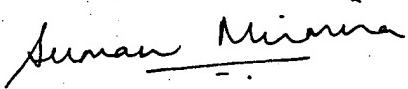
Further, the Declaration states that you are an inventor of the subject matter which is claimed. If you have reason to believe that you may not be an inventor, or if you believe any inventors may have been omitted, please contact us immediately.

Finally, if there is anything in the Declaration or in these instructions which you do not understand, please let us know so that we can clarify the matter.

If the application is accurate and complete in its present form, please sign and date the enclosed Declaration in blue ink where indicated. Please note that the assignment must be notarized. Also, sign both the Declaration and the Assignment on the same day, or sign the Assignment after signing the Declaration.

Please do not hesitate to contact us if you have any questions.

Very truly yours,



Suman Mirmira

Enclosures

cc: Elizabeth M. Barnes, Ph.D., J.D.

SV 2026193 v1
4/15/04 4:25 PM (39766.0100)

ATTENTION

Customer

THIS SHIPMENT IS BEING RETURNED FOR THE FOLLOWING REASON(S):

- Refused by recipient.
 Recipient moved and left no forwarding address or phone number.
 Recipient was not in when we attempted delivery and we were not authorized to leave shipment without a signature.
 Recipient's address on your shipment was incorrect and/or incomplete and we were unable to obtain the correct address.
 A Post Office box number was the only address given or obtainable.
 Shipment held for pickup the maximum 5 days.
 Unable to collect C.O.D. charge
 Shipper requested return
 Company policy does not allow us to keep an undeliverable shipment longer than 5 days.
 FedEx has returned this shipment at the shipper's expense via one of the following services:
 Express Saver Economy 2-Day Priority Overnight.

OTHER:

If you have any questions or need additional information, please contact FedEx Customer Service at 800-463-3339. Thank you for using FedEx.



EHL 06 8/02

FedEx | Ship Manager | Label 7918 2110 4984

Page 1 of 1

From: Origin ID: (650)833-7309
Crystal Fong
275 MIDDLEFIELD ROAD
MENLO PARK, CA 94025



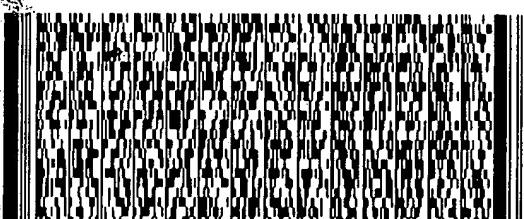
Ship Date: 15APR04
Actual Wgt: 1 LB
System#: 5092153/INET1800
Account#: S *****

REF: 39766-0100 P1



Delivery Address Bar Code

SHIP TO: (000)000-0000 BILL SENDER
Daniel Tumas
3 Rae Avenue
Orinda, CA 94563



STANDARD OVERNIGHT

FRI

Deliver By:
16APR04

TRK# 7918 2110 4984

FORM
0201

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94563 -CA-US

WA CCRA



FDX/CCRA GROUND OPS
115 CENTER AVE
PACHECO, CA 94553

SHIP DATE: 23APR04
SYSTEM #67419244CAFE2124
ACTUAL WGT: 2 LBS MAN-WGT
ACCOUNT #: 117527344

FedEx

TO:

RETURNS
HELLER EHMAN WHITE MCNAUL
275 MIDDLEFIELD RD
MENLO PARK, CA 94025
REF: ORIG#791821104984

FedEx Revenue Barcode

BILL RECIPIENT



Delivery Address Barcode (FedEx-EDR)

EXPRESS SAVER

TRK#

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0201

TUE
Deliver by:
27APR04
A2

94025 -CA-US

SFO

SC HGTA



Part # 156148-434 NRIT 8-03 ::

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Customer: This service area is provided for your internal use and convenience. Service must be marked on airbill.

FedEx Service:

ATTENTION

Customer

EXPRESS

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183

Pkg Trk#: 790122912952
THIS SHIPMENT IS BEING RETURNED FOR THE FOLLOWING REASON(S):

- Refused by recipient.
- Recipient moved and left no forwarding address or phone number.
- Recipient was not in when we attempted delivery and we were not authorized to leave shipment without a signature.
- Recipient's address on your shipment was incorrect and/or incomplete and we were unable to obtain the correct address.
- A Post Office box number was the only address given or obtainable.
- Shipment held for pickup the maximum 5 days.
- Unable to collect C.O.D. charges.
- Shipper requested return.
- Company policy does not allow us to keep an undeliverable shipment longer than 5 days.
- FedEx has returned this shipment at the shipper's expense via one of the following services:
 Express Saver Economy 2-Day Priority Overnight

OTHER:

If you have any questions or need additional information, please contact FedEx Customer Service at 800-463-3333. Thank you for using FedEx.

EHL 06 8/02

FedEx
Express



FedEx | Ship Manager | Label 7901 2291 2952

Page 1 of 1

From: Origin ID: (650)833-7309
Crystal Fong

275 MIDDLEFIELD ROAD

MENLO PARK, CA 94025

SHIP TO: (000)000-0000

BILL SENDER

Daniel Tumas

3 Rae Avenue

Orinda, CA 94563

FedEx
Express



CL9022404

Ship Date: 20APR04
Actual Wgt: 1 LB
System# 5092153/INET1800
Account# S *****

REF: 39766-0100 P1



Delivery Address Bar Code

STANDARD OVERNIGHT

TRK# 7901 2291 2952

FORM
0201

WED

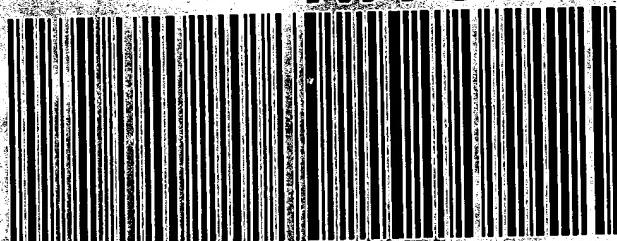
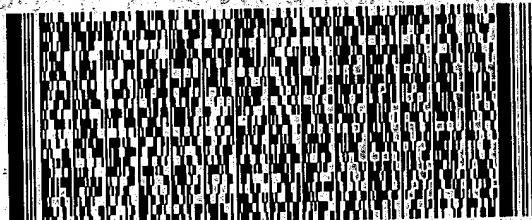
Deliver By
21APR04

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A2

94563 -CA-US

WA CCRA



ORIGIN ID: CCRA (800) 463-3339
CCR MANAGER
FDX/CCRA GROUND OPS
115 CENTER AVE
PACHECO, CA 94553

SHIP DATE: 23APR04
SYSTEM #674192 / CAFE2124
ACTUAL WGT: 2 LBS MAN-WGT
ACCOUNT #: 117527344

FedEx

TO:

RETURNS
HELLER EHRMAN WHITE MCDALE
275 MIDDLEFIELD RD

MENLO PARK, CA 94025



FedEx Revenue Barcode

BILL RECIPIENT

REF: ORIG#790122912952



Delivery Address Barcode (FedEx-EDR)

EXPRESS SAVER

TRK#

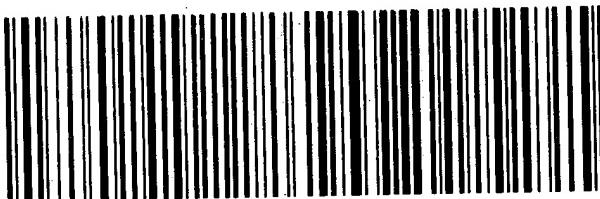
6427 9823 5928 FORM 0201

TUE
Deliver by:
27APR04
A2

94025 -CA-US

SFO
SC HGTA

Part # 156148-434 NRIT 8-03
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